Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KVC

JAMES RODNEY LARGENT,)
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Petitioner,)
)
v.) Docket No. 4304-11 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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ORDER AND DECISION

This case is on the Court's March 26, 2012 trial calendar for Phoenix, Arizona. Pending before the Court are three motions -- petitioner's motion *in limine* to avoid an erroneous presumption of legal liability via improper evidence and his motion for judgment on the pleadings, and respondent's motion for summary judgment.

This case began with a petition to review the Commissioner's notice of determination to proceed with the collection of Mr. Largent's unpaid 2005 tax bill. He filed his return for that year, claiming married-filing-separate status, only on December 24, 2008. It showed a balance due, which the Commissioner quickly assessed, together with penalties for late filing, failure to pay, and underwithholding. The Commissioner sent him a notice of intent to levy on September 28, 2009, and Mr. Largent timely requested a collection-due-process hearing. His request included a request for an installment agreement, an offer-in compromise, and innocent-spouse relief -- in other words, he checked every box on the form.

Mr. Largent and his wife then filed for bankruptcy under Chapter 7 on March 8, 2010. They did not list Mr. Largent's unpaid 2005 tax debt as a liability, but did list several other years. In any event, the Bankruptcy Court discharged what it could discharge on June 23, 2010.

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The conclusion of the bankruptcy case prompted the Commissioner to renew his effort to collect the unpaid 2005 tax debt. A settlement officer held a hearing, at which Mr. Largent raised only commonplace tax-protester arguments, and the settlement officer finished her work by sending him a notice of determination sustaining the proposed levy.

In his petition -- signed under section 1-308 of the Uniform Commercial Code, as if that meant anything in a tax case -- Mr. Largent referred to some exhibits. These exhibits featured a "conditional acceptance" and a "special appearance." The conditional acceptance lists dozens of frivolous arguments in the form of a sentence or two followed by an irrelevant citation or quote. *See, e.g.*, para. 48 ("Proof of claim that I am not entitled to all rights which formerly belong to the King by his prerogative.")

The three motions quickly followed.

The Commissioner's Motion for Summary Judgment

The Commissioner's motion is concise and persuasive. He notes that Mr. Largent nowhere contested his 2005 tax liability (which was based on his self-reported return), which means the standard of review is abuse of discretion. *See Goza v. Commissioner*, 114 T.C. 176, 181-82 (2000). He then argues that the settlement officer didn't abuse her discretion in rejecting Mr. Largent's request for alternatives to collection by levy because Mr. Largent didn't provide his signed 2009 tax return or produce any financial information. The Commissioner is correct. *See Giamelli v. Commissioner*, 129 T.C. 107, 111-12 (2007) (no abuse of discretion where taxpayer has not complied with current tax obligations); *Swanton v. Commissioner*, T.C. Memo. 2010-140 (no abuse of discretion where taxpayer did not submit financial information).

The Commissioner is likewise correct that Mr. Largent doesn't qualify for innocent-spouse relief because he didn't file a joint return for 2005. *See Raymond v. Commissioner*, 119 T.C. 191, 195-97 (2002).

And, in any event, Mr. Largent didn't actually pursue any of these rational arguments in his CDP hearing, instead choosing to challenge the IRS's authority to collect taxes under the Fair Debt Collection Practices Act. That Act, of course, does not apply. *See* 15 U.S.C. § 1692a(6) (the term "debt collector" does not include "any officer or employee of the United States or any State to the extent that

collecting or attempting to collect any debt is in the performance of his official duties").

> Mr. Largent's answer to the Commissioner's motion features another few dozen frivolous arguments. For example,
> Also, that I am a Human Being, (permanent resident of 'Planet Earth') . . . I live on the dry land of Arizona in its dejure capacity as one of the several states, I am not and have never been a United States ® [Mr. Largent appears to believe that the United States is a registered trademark] citizen of any foreign or domestic municipal corporation . . .
>
> . . . I am, a natural born, (American National) State Citizen of the republic of Arizona, in its dejure capacity as one of the several states of the Union 1789.

We think the reference to "dry land" might refer to the tax-protester argument that Tax Court is somehow an admiralty court, and the business about state citizenship is an old chestnut that only Americans acquiring citizenship under the Fourteenth Amendment need to pay taxes. Such arguments have uniformly been rejected. *See, e.g.*, *United States v. Saunders*, 951 F.2d 1065, 1068-69 (9th Cir. 1991); *United States v. Studley*, 783 F.2d 934, 937 (9th Cir. 1986).

The one serious argument in all of Mr. Largent's paperwork is that his 2005 tax liability was discharged in bankruptcy. But even this fails: Section 523 of the Bankruptcy Code doesn't allow discharge of a tax debt with respect to which a return was filed after the due date of the return, and after two years before the date of the filing of the bankruptcy petition. *See* 11 U.S.C. 523(a)(1)(B).

Mr. Largent's 2005 return was due on April 15, 2006, but he didn't file it until December 24, 2008. December 24, 2008 is within two years of March 8, 2010, which is when he filed his bankruptcy case. The Commissioner is again correct. (And the Court observes that the settlement officer did verify that the various penalties assessed against Mr. Largent were abated -- those penalties *were* dischargeable in bankruptcy under the circumstances, *see* 11 U.S.C. 523(a)(7).)

Mr. Largent's Motions

Mr. Largent's motion *in limine* seems to raise only the frivolous argument that the Internal Revenue Code doesn't impose "liability" for an income tax on

taxpayers. *But see Liddane v. Commissioner*, 85 A.F.T.R.2d (RIA) 2000-750 (3d Cir. Jan. 14, 2000) ("Appellants' argument that the Internal Revenue Code does not . . . impose income tax liability on individuals is also meritless"), *aff'g* T.C. Memo. 1998-259.

His motion for judgment on the pleadings likewise rehashes some of the frivolous arguments he makes elsewhere, but includes the serious argument about the extent of his discharge in bankruptcy that we've already discussed above.

To sum up, it is

ORDERED that petitioner's December 12, 2011 motion for judgment on the pleadings is denied. It is also

ORDERED that petitioner's December 12, 2011 motion *in limine* to avoid an erroneous presumption is denied. It is also

ORDERED that respondent's December 16, 2011 motion for summary judgment is granted. And it is

ORDERED and DECIDED that respondent may proceed with the collection of petitioner's federal income tax liabilities for the tax year 2005, as described in the Notices of Determination Concerning Collection Action(s) under Section 6320 and/or 6330, dated February 3, 2011.

(Signed) Mark V. Holmes
Judge

ENTERED: **MAR 01 2012**